

AMENDED IN ASSEMBLY APRIL 28, 2004

AMENDED IN ASSEMBLY APRIL 14, 2004

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1913

Introduced by Assembly Member Cohn

February 9, 2004

An act to amend Section 319 of, to amend and repeal Section 309 of, and to repeal and amend Section 361.4 of, the Welfare and Institutions Code, relating to foster care.

LEGISLATIVE COUNSEL'S DIGEST

AB 1913, as amended, Cohn. Foster care providers: evaluation and criminal records checks.

(1) Existing law sets forth circumstances under which a minor may be adjudged a dependent child of the juvenile court, and establishes procedures to determine the temporary placement of a dependent child.

Existing law authorizes temporary placement of a minor child in the home of an able and willing relative, or an able and willing nonrelative extended family member, upon completion of an assessment of the suitability of the relative or nonrelative extended family member by the county welfare department. Under existing law, the standards the home of a nonrelative extended family member for the placement of a child is required to be the same standards as set forth in regulations for licensing foster family homes. Under existing law, these provisions become inoperative and are to be replaced with similar provisions on January 1, 2006.

Existing law separately provides for Aid to Families with Dependent Children (AFDC) for children who have been removed from their homes in certain instances.

This bill would delete the date upon which the above provisions become inoperative and would repeal the alternative provisions. The bill would require, immediately following the placement of a child in the home of a relative or a nonrelative extended family member, that the county welfare department evaluate and approve or deny the home for purposes of AFDC-FC eligibility. By expanding the duties of county welfare departments in this regard, the bill would impose a state-mandated local program.

(2) Existing law requires the county social worker to visit the home of a relative or prospective guardian who is not a licensed or certified foster parent, prior to placing the child in that home, to ascertain the appropriateness of the placement. Existing law also requires the court or county social worker to initiate a state and federal criminal records check through the California Law Enforcement Telecommunications System, and within 5 days after that to initiate a fingerprint clearance check of the person through the Department of Justice. Existing law requires the court and county social worker to consider the home of the person for placement of the child, if the fingerprint clearance check indicates that the person has no criminal record. Existing law provides until January 1, 2005, that the child shall not be placed in the home of the person if the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure as a community care facility, unless a criminal records exemption approved by the Director of Social Services has been granted by the county.

This bill would revise these provisions, including authorizing the placement of a child, based on the results of the criminal records check, instead of the fingerprint clearance check, and would make other, technical changes.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,



reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 309 of the Welfare and Institutions
2 Code, as amended by Section 3 of Chapter 918 of the Statutes of
3 2002, is amended to read:

4 309. (a) Upon delivery to the social worker of a child who has
5 been taken into temporary custody under this article, the social
6 worker shall immediately investigate the circumstances of the
7 child and the facts surrounding the child's being taken into custody
8 and attempt to maintain the child with the child's family through
9 the provision of services. The social worker shall immediately
10 release the child to the custody of the child's parent, guardian, or
11 responsible relative unless one or more of the following conditions
12 exist:

13 (1) The child has no parent, guardian, or responsible relative;
14 or the child's parent, guardian, or responsible relative is not willing
15 to provide care for the child.

16 (2) Continued detention of the child is a matter of immediate
17 and urgent necessity for the protection of the child and there are
18 no reasonable means by which the child can be protected in his or
19 her home or the home of a responsible relative.

20 (3) There is substantial evidence that a parent, guardian, or
21 custodian of the child is likely to flee the jurisdiction of the court.

22 (4) The child has left a placement in which he or she was placed
23 by the juvenile court.

24 (5) The parent or other person having lawful custody of the
25 child voluntarily surrendered physical custody of the child
26 pursuant to Section 1255.7 of the Health and Safety Code and did
27 not reclaim the child within the 14-day period specified in
28 subdivision (e) of that section.

29 (b) In any case in which there is reasonable cause for believing
30 that a child who is under the care of a physician or surgeon or a
31 hospital, clinic, or other medical facility and cannot be
32 immediately moved is a person described in Section 300, the child
33 shall be deemed to have been taken into temporary custody and

1 delivered to the social worker for the purposes of this chapter while
2 the child is at the office of the physician or surgeon or the medical
3 facility.

4 (c) If the child is not released to his or her parent or guardian,
5 the child shall be deemed detained for purposes of this chapter.

6 (d) (1) If an able and willing relative, as defined in Section
7 319, or an able and willing nonrelative extended family member,
8 as defined in Section 362.7, is available and requests temporary
9 placement of the child pending the detention hearing, the county
10 welfare department shall initiate an assessment of the relative's or
11 nonrelative extended family member's suitability, which shall
12 include an in-home inspection to assess the safety of the home and
13 the ability of the relative or nonrelative extended family member
14 to care for the child's needs, and a consideration of the results of
15 a criminal records check conducted pursuant to Section 16504.5
16 and a check of allegations of prior child abuse or neglect
17 concerning the relative or nonrelative extended family member
18 and other adults in the home. Upon completion of this assessment,
19 the child may be placed in the *assessed* home.

20 (2) Immediately following the placement of a child in the home
21 of a relative or a nonrelative extended family member, the county
22 welfare department shall evaluate and approve or deny the home
23 for purposes of AFDC-FC eligibility pursuant to Section 11402.
24 The standards used to evaluate and grant or deny approval of the
25 home of the relative and of the home of a nonrelative extended
26 family member, as described in Section 362.7, shall be the same
27 standards set forth in regulations for the licensing of foster family
28 homes which prescribe standards of safety and sanitation for the
29 physical plant and standards for basic personal care, supervision,
30 and services provided by the caregiver.

31 (3) If a relative or nonrelative extended family member meets
32 all other conditions for approval, except for the receipt of the
33 Federal Bureau of Investigation's criminal history information for
34 the relative or nonrelative extended family member, and other
35 adults in the home, as indicated, the county welfare department
36 may approve the home and document that approval, if the relative
37 or nonrelative extended family member, and each adult in the
38 home, has signed and submitted a statement that he or she has
39 never been convicted of a crime in the United States, other than a
40 traffic infraction as defined in paragraph (1) of subdivision (a) of

1 Section 42001 of the Vehicle Code. If, after the approval has been
2 granted, the department determines that the relative or nonrelative
3 extended family member or other adult in the home has a criminal
4 record, the approval may be terminated.

5 SEC. 2. Section 309 of the Welfare and Institutions Code, as
6 amended by Section 4 of Chapter 918 of the Statutes of 2002, is
7 repealed.

8 SEC. 3. Section 319 of the Welfare and Institutions Code is
9 amended to read:

10 319. (a) At the initial petition hearing, the court shall
11 examine the child's parents, guardians, or other persons having
12 relevant knowledge and hear the relevant evidence as the child, the
13 child's parents or guardians, the petitioner, or their counsel desires
14 to present. The court may examine the child, as provided in Section
15 350.

16 (b) The social worker shall report to the court on the reasons
17 why the child has been removed from the parent's custody; the
18 need, if any, for continued detention; the available services and the
19 referral methods to those services that could facilitate the return of
20 the child to the custody of the child's parents or guardians; and
21 whether there are any relatives who are able and willing to take
22 temporary custody of the child. The court shall order the release
23 of the child from custody unless a prima facie showing has been
24 made that the child comes within Section 300, the court finds that
25 continuance in the parent's or guardian's home is contrary to the
26 child's welfare, and any of the following circumstances exist:

27 (1) There is a substantial danger to the physical health of the
28 child or the child is suffering severe emotional damage, and there
29 are no reasonable means by which the child's physical or
30 emotional health may be protected without removing the child
31 from the parents' or guardians' physical custody.

32 (2) There is substantial evidence that a parent, guardian, or
33 custodian of the child is likely to flee the jurisdiction of the court.

34 (3) The child has left a placement in which he or she was placed
35 by the juvenile court.

36 (4) The child indicates an unwillingness to return home, if the
37 child has been physically or sexually abused by a person residing
38 in the home.

39 (c) If the matter is continued pursuant to Section 322 or for any
40 other reason, the court shall find that the continuance of the child

1 in the parent's or guardian's home is contrary to the child's welfare
2 at the initial petition hearing or order the release of the child from
3 custody.

4 (d) (1) The court shall also make a determination on the
5 record, referencing the social worker's report or other evidence
6 relied upon, as to whether reasonable efforts were made to prevent
7 or eliminate the need for removal of the child from his or her home,
8 pursuant to subdivision (b) of Section 306, and whether there are
9 available services that would prevent the need for further
10 detention. Services to be considered for purposes of making this
11 determination are case management, counseling, emergency
12 shelter care, emergency in-home caretakers, out-of-home respite
13 care, teaching and demonstrating homemakers, parenting training,
14 transportation, and any other child welfare services authorized by
15 the State Department of Social Services pursuant to Chapter 5
16 (commencing with Section 16500) of Part 4 of Division 9. The
17 court shall also review whether the social worker has considered
18 whether a referral to public assistance services pursuant to Chapter
19 2 (commencing with Section 11200) and Chapter 7 (commencing
20 with Section 14000) of Part 3, Chapter 1 (commencing with
21 Section 17000) of Part 5, and Chapter 10 (commencing with
22 Section 18900) of Part 6 of Division 9 would have eliminated the
23 need to take temporary custody of the child or would prevent the
24 need for further detention.

25 (2) If the child can be returned to the custody of his or her parent
26 or guardian through the provision of those services, the court shall
27 place the child with his or her parent or guardian and order that the
28 services shall be provided. If the child cannot be returned to the
29 custody of his or her parent or guardian, the court shall determine
30 if there is a relative who is able and willing to care for the child,
31 and has been assessed pursuant to paragraph (1) of subdivision (d)
32 of Section 309.

33 (e) Whenever a court orders a child detained, the court shall
34 state the facts on which the decision is based, shall specify why the
35 initial removal was necessary, shall reference the social worker's
36 report or other evidence relied upon to make its determination
37 whether continuance in the home of the parent or legal guardian
38 in contrary to the child's welfare, shall order temporary placement
39 and care of the child to be vested with the county child welfare
40 department pending the hearing held pursuant to Section 355 or

1 further order of the court, and shall order services to be provided
2 as soon as possible to reunify the child and his or her family if
3 appropriate.

4 (f) When the child is not released from custody, the court may
5 order that the child shall be placed in the assessed home of a
6 relative, in an emergency shelter or other suitable licensed place,
7 in a place exempt from licensure designated by the juvenile court,
8 or in the assessed home of a nonrelative extended family member
9 as defined in Section 362.7 for a period not to exceed 15 judicial
10 days.

11 As used in this section, “relative” means an adult who is related
12 to the child by blood, adoption, or affinity within the fifth degree
13 of kinship, including stepparents, stepsiblings, and all relatives
14 whose status is preceded by the words “great,” “great-great,” or
15 “grand,” or the spouse of any of these persons, even if the
16 marriage was terminated by death or dissolution. However, only
17 the following relatives shall be given preferential consideration for
18 placement of the child: an adult who is a grandparent, aunt, uncle,
19 or sibling of the child.

20 The court shall consider the recommendations of the social
21 worker based on the approval of the relative’s home, including the
22 results of a criminal records check and prior child abuse
23 allegations, if any, prior to ordering that the child be placed with
24 a relative. The court shall order the parent to disclose to the social
25 worker the names, residences, and any known identifying
26 information of any maternal or paternal relatives of the child. The
27 social worker shall initiate the assessment pursuant to Section
28 361.3 of any relative to be considered for continuing placement.

29 SEC. 4. Section 361.4 of the Welfare and Institutions Code,
30 as amended by Section 5 of Chapter 918 of the Statutes of 2002,
31 is repealed.

32 SEC. 5. Section 361.4 of the Welfare and Institutions Code,
33 as amended by Section 6 of Chapter 918 of the Statutes of 2002,
34 is amended to read:

35 361.4. (a) Prior to placing a child in the home of a relative,
36 or the home of any prospective guardian or other person who is not
37 a licensed or certified foster parent, the county social worker shall
38 visit the home to ascertain the appropriateness of the placement.

39 (b) Whenever a child may be placed in the home of a relative,
40 or the home of any prospective guardian or other person who is not

1 a licensed or certified foster parent, the court or county social
2 worker placing the child shall cause a state and federal level
3 criminal records check to be conducted by an appropriate
4 governmental agency through the California Law Enforcement
5 Telecommunications System (CLETS) pursuant to Section
6 16504.5. The criminal records check shall be conducted with
7 regard to all persons over the age of 18 years living in the home,
8 and on any other person over the age of 18 years, other than
9 professionals providing professional services to the child, known
10 to the placing entity who may have significant contact with the
11 child, including any person who has a familial or intimate
12 relationship with any person living in the home. A criminal records
13 check may be conducted pursuant to this section on any person
14 over the age of 14 years living in the home who the county social
15 worker believes may have a criminal record. Within five judicial
16 days following the criminal records check conducted through the
17 California Law Enforcement Telecommunications System, the
18 social worker shall ensure that a fingerprint clearance check of the
19 relative and any other person whose criminal record was obtained
20 pursuant to this subdivision is initiated through the Department of
21 Justice to ensure the accuracy of the criminal records check
22 conducted through the California Law Enforcement
23 Telecommunications System and shall review the results of any
24 criminal records check to assess the safety of the home. The
25 Department of Justice shall forward fingerprint requests for
26 federal level criminal history information to the Federal Bureau of
27 Investigation pursuant to this section.

28 (c) Whenever a child may be placed in the home of a relative,
29 or a prospective guardian or other person who is not a licensed or
30 certified foster parent, the county social worker shall cause a check
31 of the Child Abuse Index pursuant to subdivision (a) of Section
32 11170 of the Penal Code to be requested from the Department of
33 Justice. The Child Abuse Index check shall be conducted on all
34 persons over the age of 18 years living in the home.

35 (d) (1) If the criminal records check indicates that the person
36 has no criminal record, the county social worker and court may
37 consider the home of the relative, prospective guardian, or other
38 person who is not a licensed or certified foster parent for placement
39 of a child.



1 (2) If the criminal records check indicates that the person has
2 been convicted of a crime that would preclude licensure under
3 Section 1522 of the Health and Safety Code, the child may not be
4 placed in the home, unless a criminal records exemption has been
5 granted by the county, based on substantial and convincing
6 evidence to support a reasonable belief that the person with the
7 criminal conviction is of such good character as to justify the
8 placement and not present a risk of harm to the child.

9 SEC. 6. Notwithstanding Section 17610 of the Government
10 Code, if the Commission on State Mandates determines that this
11 act contains costs mandated by the state, reimbursement to local
12 agencies and school districts for those costs shall be made pursuant
13 to Part 7 (commencing with Section 17500) of Division 4 of Title
14 2 of the Government Code. If the statewide cost of the claim for
15 reimbursement does not exceed one million dollars (\$1,000,000),
16 reimbursement shall be made from the State Mandates Claims
17 Fund.

